IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

FRIDAY, THE 23RD NOVEMBER 2007 / 2ND AGRAHAYANA 1929

OP.No. 14079 of 1998(A)

PETITIONERS:

1. V.N.KESAVAN, VADAKKEPARAMBIL HOUSE
KIZHAKKUMBHAGOMKARA, ETTUMANOOR VILLAGE

Addl. Pet. 2. SHAJI KUMAR.V.K.
KAITHAKKAL HOUSE
ETTUMANOOR,KOTTAYAM

Addl. Pet.3. SAJI KUMAR.V.K.
KAITHAKKAL HOUSE
ETTUMANOOR,KOTTAYAM

Addl. Pet.4. SAJNI.V.K.
KAITHAKKAL HOUSE
ETTUMANOOR, KOTTAYAM
(Impleaded as additional petitioners as per
I.A.1752/06 allowed on 16.10.06)

BY ADV. SRI.K.GOPALAKRISHNA KURUP

RESPONDENTS:

1. THE LAND REFORMS (APPELLATE AUTHORITY)
THRISSUR - COLLECTORATE THRISSUR

2. EASWARAN NEELAKANDAN
PULIYANPALLIL HOUSE, KIZHAKKUMBHAGOM KARA
ETTUMANOOR VILLAGE

3. GOPALAKRISHNAN
S/O NEELAKANDAN, PULIYANPALLIL HOUSE
KIZHAKKUMBHAGOM KARA, ETTUMANOOR VILLAGE

4. MANAGER, ETTUMANOOR DEVASWOM,
ETTUMANOOR VILLAGE, KOTTAYAM

BY ADV. SRI.ABRAHAM MATHEW
SMT.A.A.GEETHA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 23/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.Nos.24886 & 24885 OF 1998
IN O.P.14079 OF 1998

Dismissed.

Sd/- A.K.BASHEER, JUDGE

23.11.2007

APPENDIX

PETITIONER'S EXHIBITS:

Ext.P1: True copy of the petition in I.A.40/96 in A.A.24/96 and the affidavit filed in support of the same.

Ext.P2: True copy of the objections against the application filed for condoning the delay in I.A.40/96 in A.A.24/96.

Ext.P3: Photocopy of the judgment dated 31.1.96 in O.S.235/93 of the Munsiffs Court, Ettumanoor.

RESPONDENT'S EXHIBITS:

Ext.R2(A): A true copy of the Thandaper Account 5.333 Ares of Land in Sy.No.245/4C issued from the Ettumanoor Village Office on 16.6.1998.

Ext.R2(B)(1): A true copy of the tax receipt dated 1st Meenam 1116M.E. issued from the Ettumanoor Village Office.

Ext.R2(B)(2): A true copy of the tax receipt dated 14th Meenam 1116 ME issued from the Ettumanoor Village Office.

Ext.R2(B)(3): A true copy of the tax receipt dated 19.5.1122 M.E. issued from the Ettumanoor Village Office.

Ext.R2(B)(4): A true copy of the tax receipt dated 15.2.1951 issued from the Ettumanoor Village office.

Ext.R2(B)(5): True copy of the tax receipt dated 8.2.1952 issued from the Ettumanoor Village Office.

Ext.R2(B)(6): True copy of the tax receipt dated 25.6.1953 issued from the Ettumanoor Village Office.

Ext.R2(B)(7): True copy of the tax receipt dated 25.2.1955 issued from the Ettumanoor Village Office.

Ext.R2(B)(B): True copy of the tax receipt dated 4.9.1965 issued from the Ettumanoor Village Office.

// true copy // P.A. to Judge

A.K.BASHEER, J.

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O.P.No.14079 OF 1998

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Dated this the 23rd day of November, 2007

JUDGMENT

Petitioners who have now been impleaded in this original petition as the legal representatives of the original petitioner, impugn the order passed by the Appellate Authority (Land Reforms), Thrissur allowing the petition for condonation of delay in filing the appeal preferred by respondents 2 and 3. However, the impugned order which was stated to have been passed by the Appellate Authority on February 3, 1997 in I.A.40/96 in A.A.24/96 has not been produced before this court.

2. For the sake of convenience the prayers in the original petition are extracted hereunder:

> (i) to call for the records leading to the order dated 3.2.97 in I.A. 40/96 in A.A.24/96 on the file of the 1st respondent and to quash the same, by the issue of a writ of certiorari.
>
> (ii) to issue a writ of mandamus or other appropriate writ, direction or order directing the 1st respondent to consider and pass fresh and appropriate orders in I.A.40/96 in A.A.24/96 after hearing the parties.
>
> (iii) to issue a writ of mandamus or other appropriate writ, direction or order directing the 1st respondent to issue certified copies of the order dated 3.2.97 in

I.A.40/96 in A.A.24/96 and of the order sheet in A.A.24/96 to the petitioner.

3. It is contended by learned counsel for the petitioners that the Appellate Authority had been privy to manipulation and fraud and if the A and B diary relating to the case are called for, it would be clear as to how the process was abused. Late Kesavan (original petitioner) had appeared before the Appellate Authority in response to the notice received by him in the interlocutory application for condonation of delay of about three years and filed objection to the same, a copy of which is on record as Ext.P2. In the counter affidavit Sri.Kesavan had stated the reasons as to why the delay was not liable to be condoned. The Appellate Authority had posted the interlocutory application on several days. According to the petitioners, the B diary proceeding will show that the entry for November 25, 1996 was that “R1 already filed counter R2 prays”. The case was adjourned to Januray 6, 1997 at the Ernakulam camp. It was again adjourned to January 14, 1997. On that day there was no sitting. The case was again adjourned to February 27, 1997 and on that day the case was not called.

Petitioners, contend that the case was posted to April 30, 1997, and on all the above posting days either the petitioner or his counsel was present before the Appellate Authority.

4. In this context, it may be noticed that this original petition was filed on July 27, 1998. It is averred in the original petition that the petitioner came to know that the Appellate Authority had passed orders on February 3, 1997 allowing the petition for condonation of delay and "immediately" thereon he filed an application for a certified copy of the order on July 4, 1998. It is not disclosed on what date the petitioner came to know about the order passed by the Appellate Authority. The petitioner has extracted the order that is stated to have been passed by the Appellate Authority on February 3, 1997, which reads thus:

> "No objection filed. Several chances were granted hence the delay condonation petition allowed. Appeal taken on file posted to 8/4/97"

5. At the time when the original petition was filed, the petitioner had not got the certified copy of the order. Even today

the certified copy of the order has not been produced by the petitioner. The grievance of the petitioner is that he was totally kept in the dark with regard to the proceedings that took place in the Appellate Authority. He has got a further case that fraud was played on him in the case. On January 14, 1997 there was no sitting and the case was adjourned to February 27, 1997. But it was not called on that day. Neither the petitioner nor his Advocate was informed about the date of posting on February 3, 1997. But it was revealed from the proceedings sheet that the case was posted to February 3, 1997 and order in the I.A. was passed on that day.

6. I do not propose to deal with the various other contentions raised by the petitioner in view the order that I propose to pass in this original petition. It is pertinent to note that this original petition has been pending before this court since 1998. The appeal before the Appellate Authority was preferred by respondent no.1 way back in the year 1996. The proceedings in the appeal have remained stayed by virtue of an interim order passed by this court on July 27, 1998.

7. The crux of the issue involved in this case is whether the Appellate Authority was justified in condoning the delay in filing the appeal. I hasten to emphasise that I am not overlooking or ignoring the serious allegations made by the petitioner with regard to the alleged irregularities in the postings of the delay petition before the Appellate Authority. But the fact remains that the Appellate Authority has chosen to condone the delay, may be without hearing the petitioner who is seen to have filed his objection. The order does not mean that the Appellate Authority has decided the appeal on its merit. Final adjudication is yet to follow. In that view of the matter, I am of the view that in the interest of justice and also in the interest of the parties it may not be necessary to direct the Appellate Authority to reconsider the petition for condonation of delay and pass fresh orders thereon.

8. There is yet another aspect of the matter. Sri.Kesavan (the original petitioner) had passed away sometime in the year 2003. His legal representatives have chosen to come on record only in 2006. It is also on record that respondent no.2 had also passed away sometime thereafter during the pendency of this

original petition. Respondent no.3 in this original petition is the son of respondent no.2 who claims that the property involved in the appeal exclusively belongs to him as bequeathed by his late father. Anyhow, this is a different issue. Petitioner had impleaded respondent no.5 to 9 as the legal representatives of respondent no.2. From the counter affidavit filed by those respondents, it has come out that they are not the legal representatives of respondent no.2 and that they have been impleaded by the petitioners without any justifiable reasons. Anyhow, in the peculiar facts and circumstances, since respondent no.3 who is admittedly the son of deceased respondent no.2 is on record, I am satisfied that there is substantial representation. The petitioners have now come on record in this original petition as the legal representatives of the original petitioner. If the Appellate Authority takes the view that the other legal representatives of respondent no.2 are to be impleaded, it will be open to the Appellate Authority to direct the parties to take steps in this regard.

9. Having regard to the fact that this dispute between the parties has been pending for more than a decade. I am satisfied that the Appellate Authority has to be directed to give a quietus to this issue and decide it on merit expeditiously. I make it clear that it will be open to the petitioners to challenge the propriety and legality of the order that is stated to have been passed by the Appellate Authority on the petition for condonation of delay before the revisional authority, if such a situation arises. The order passed by the Appellate Authority on the petition for condonation of delay shall be subject to the decision of the revisional authority. In other words, it will be open to the petitioners to challenge the correctness of the impugned order, if ultimately final order in the appeal is challenged before the Revisional authority.

The Appellate Authority shall hear and dispose of the appeal on its merit as expeditiously as possible, at any rate, within two months from the date of receipt of a copy of this judgment.

(A.K.BASHEER, JUDGE)

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A.K.BASHEER, J.

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O.P.No.14079 OF 1998
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JUDGMENT

Dated, 23rd Nov. 2007